

Message Text

LIMITED OFFICIAL USE

PAGE 01 MANILA 11775 250936Z

44

ACTION TRSE-00

INFO OCT-01 EA-07 ISO-00 L-03 SP-02 AID-05 EB-07 NSC-05

CIEP-01 SS-15 STR-04 OMB-01 CEA-01 CIAE-00 COME-00

FRB-03 INR-07 NSAE-00 USIA-06 XMB-02 OPIC-03 LAB-04

SIL-01 IO-10 OIC-02 INT-05 /095 W

----- 060086

R 250752Z AUG 75

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 6811

LIMITED OFFICIAL USE MANILA 11775

USADB

E.O. 11652: ADS, DECLAS 12/31/76

TAGS: EAID, EFIN

SUBJECT: MICRONESIA MEMBERSHIP IN ADB

PASS TREASURY FOR RUSSELL MUNK

REF: A) TREASURY 75-141; B) MANILA 11448

1. FOLLOWING IS ADB GENERAL COUNSEL'S REPLY TO QUESTIONS
RAISED REF A CONCERNING POSSIBLE APPLICATION FOR MEMBERSHIP
OF MICRONESIA AND OBLIGATIONS WHICH UNITED STATES WOULD BE
REQUIRED TO ASSUME UNDER ARTICLE 3.3 OF BANK'S ARTICLES OF
AGREEMENT:

QUOTE

1. ARTICLE 3.3 EXPRESSLY CONTEMPLATES THAT THE RESPONSIBILITY
ASSUMED BY THE METROPOLITAN STATE UNDER ARTICLE 3.3
WILL APPLY TO ALL OBLIGATIONS OF THE DEPENDENT TERRITORY
WHICH ARE INCURRED QUOTE BY REASON OF ADMISSION TO
MEMBERSHIP IN THE GANK AND ENJOYMENT OF THE BENEFITS
OF SUCH MEMBERSHIP UNQUOTE ALTHOUGH THIS RESPONSIBILITY
TERMINATES UPON THE TERRITORY BECOMING RESPONSIBLE FOR
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 MANILA 11775 250936Z

ITS OWN INTERNATIONAL RELATIONS, IT IS NOT OTHERWISE

LIMITED. I DO NOT BELIEVE THAT THE BANK WOULD BE WILLING TO ACCEPT A LIMITATION, IN TERMS OF AMOUNT OR OTHERWISE, ON THE METROPOLITAN STATE'S LIABILITY TO THE BANK UNDER ITS UNDERTAKING, AND I DOUBT (IN VIEW OF THE WORDING OF THE CHARTER PROVISION) THAT THE BANK PROPERLY COULD ACCEPT SUCH A LIMITATION.

2. THIS, AS YOU POINT OUT IN YOUR MEMORANDUM, PRESENTS A PROBLEM FOR THE METROPOLITAN STATE, SINCE FEW GOVERNMENTS ARE ANXIOUS TO ACCEPT UNLIMITED FINANCIAL LIABILITIES, AND IN MANY CASES THERE ARE INTERNAL LIMITATIONS UPON THE FINANCIAL OBLIGATIONS WHICH THE GOVERNMENT MAY INCUR WITHOUT AUTHORISATION OF THE LEGISLATURE. IT IS, HOWEVER, USUALLY POSSIBLE FOR THE METROPOLITAN STATE TO RESOLVE THIS PROBLEM, WITHOUT DEPARTING FROM THE REQUIREMENTS OF ARTICLE 3.3, BY REQUIRING THE DEPENDENT TERRITORY NOT TO INCUR CERTAIN SPECIFIED TYPES OF FINANCIAL OBLIGATIONS TO THE BANK, WITHOUT ITS CONSENT. BY CONTROLLING THE EXTENT TO WHICH SUCH OBLIGATIONS MAY BE INCURRED, THE METROPOLITAN STATE CAN, IN EFFECT, CONTROL THE EXTENT OF ITS OWN LIABILITY TO THE BANK.

3. OFTEN, THE CONSTITUTIONAL RELATIONSHIP BETWEEN THE STATE AND ITS DEPENDENT TERRITORY MAKES PRIOR CONSENT OF THE STATE TO THE INCURRING OF OBLIGATIONS MANDATORY IN ANY EVENT. IF NOT, THEN THE MATTER CAN BE DEALT WITH IN AN AGREEMENT REACHED BETWEEN THE TWO PARTIES PRIOR TO SUBMISSION OF THE APPLICATION AND ITS ACCOMPANYING UNDERTAKING TO THE BANK. I SHOULD, HOWEVER, EMPHASIZE THAT THE PROCEDURE IS A MATTER WHICH, AS FAR AS THE BANK IS CONCERNED, IS ONE TO BE SETTLED BETWEEN THE STATE AND ITS TERRITORY. IT WOULD NOT BE REFLECTED IN ANY WAY IN THE DOCUMENTS SUBMITTED TO THE BANK UNDER ARTICLE 3.3.

4. I SHOULD ALSO NOTE THAT, IN THE CASE OF THE TWO MOST IMPORTANT TYPES OF FINANCIAL OBLIGATIONS WHICH MAY BE INCURRED BY A DEPENDENT TERRITORY AS A CONSEQUENCE OF JOINING THE BANK - SUBSCRIPTIONS TO CAPITAL, AND LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 MANILA 11775 250936Z

OBLIGATIONS IN RESPECT OF LOANS - THE BANK REQUIRES AS A CONDITION OF EFFECTIVENESS THAT A FORMAL CERTIFICATION OR OPINION TO BE GIVEN BY THE TERRITORY (AS BY ALL OTHER MEMBERS INCURRING SIMILAR OBLIGATIONS) TO THE EFFECT THAT THE OBLIGATION HAS BEEN VALIDLY INCURRED IN ACCORDANCE WITH ALL NECESSARY INTERNAL PROCEDURES. IF THE NECESSARY PROCEDURES INCLUDE A REQUIREMENT OF CONSENT FROM THE METROPOLITAN STATE, THE CERTIFICATION

OR OPINION CANNOT BE GIVEN UNLESS AND UNTIL THE
REQUIRED CONSENT HAS BEEN OBTAINED.

5. THE PROCEDURE REFERRED TO IN PARAGRAPH 2 HAS BEEN
ADOPTED BY BOTH AUSTRALIA (IN RESPECT OF PAPUA
NEW GUINEA) AND THE UNITED KINGDOM (IN RESPECT OF HONG
KONG, FIJI, THE GILBERT AND ELLICE ISLANDS AND THE
BRITISH SOLOMON ISLANDS). IN THOSE CASES, I UNDERSTAND,
A REQUIREMENT OF PRIOR CONSENT TO FINANCIAL OBLIGATIONS
PROPOSED TO BE INCURRED BY THE TERRITORY HAS ALWAYS BEEN
A FEATURE OF THE CONSTITUTIONAL RELATIONSHIP BETWEEN
THE PARTIES, QUITE INDEPENDENT OF THE ISSUES PRESENTED
BY THE PROPOSED APPLICATION FOR MEMBERSHIP IN THE BANK.
IT IS BEING CONSIDERED BY THE NEW ZEALAND AUTHORITIES IN
CONNECTION WITH A POSSIBLE APPLICATION FOR MEMBERSHIP
OF THE COOK ISLANDS. I MIGHT ADD THAT, IN THE NEW
ZEALAND CASE, THERE SEEMS TO BE SOME DOUBT AS TO THE
PROPRIETY OF NEW ZEALAND REQUIRING THE COOK ISLANDS
TO OBTAIN NEW ZEALAND'S CONSENT BEFORE BORROWING FROM
OR SUBSCRIBING TO CAPITAL IN THE BANK, SINCE THE COOK
ISLANDS IS DESCRIBED AS BEING QUOTE A SELF-GOVERNING
TERRITORY IN FREE ASSOCIATION WITH NEW ZEALAND UNQUOTE.
WE HAVE INDICATED THAT, FROM THE BANK'S POINT OF VIEW,
THE DECISION IS ONE WHICH LIES ENTIRELY WITHIN THE SCOPE
OF RELATIONS BETWEEN NEW ZEALAND AND THE COOK ISLANDS.
WE HAVE ALSO POINTED OUT, HOWEVER, THAT IF NEW ZEALAND'S
CONCERN WITH THE CONSTITUTIONAL PROPERTIES INHIBITS IT
FROM REQUIRING A PRIOR CONSENT PROCEDURE, THEN NEW
ZEALAND MUST INEVITABLY HAVE A LESS THAN COMPLETE CONTROL
OVER THE INCURRING OF LIABILITIES FOR WHICH IT WILL BE
RESPONSIBLE UNDER ITS UNDERTAKING.
END QUOTE

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 MANILA 11775 250936Z

2. PLEASE ADVISE IF FURTHER DETAILS NEEDED. SULLIVAN

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, MEMBERSHIP APPLICATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 25 AUG 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975MANILA11775
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750293-0509
From: MANILA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750821/aaaaasqp.tel
Line Count: 155
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION TRSE
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 75 MANILA 11448
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 14 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14 JUL 2003 by BoyleJA>; APPROVED <18 NOV 2003 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MICRONESIA MEMBERSHIP IN ADB PASS TREASURY FOR RUSSELL MUNK
TAGS: EAID, EFIN, TQ, ADB
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006